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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES

Forty-eighth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 36th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 30 August 1996, at 10 a.m.

Chairman: Mr. EIDE

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* The summary record of the first part (closed) of the meeting appears as document E/CN.4/Sub.2/1996/SR.36.

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GE.96-13986 (E)

The public part of the meeting was called to order at 10.50 a.m.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS RELATING TO AGENDA ITEMS 8 AND 18 (continued)

Draft resolutions relating to agenda item 18 (continued)

Draft resolution E/CN.4/Sub.2/1996/L.47 (Relationship between the enjoyment of human rights, in particular economic, social and cultural rights and the right to development, and the working methods and activities of transnational corporations)

1. Mr. DIAZ URIBE said that in that draft resolution the Sub-Commission requested the Commission to establish a working group, inter alia, to make recommendations and proposals aimed at regulating the working methods and activities of transnational corporations. Admittedly, as Mr. Bossuyt had said at a previous meeting, transnational enterprises contributed to efforts to promote development around the world but the fact remained that some of them wielded considerable financial power, and that could have adverse consequences for the enjoyment of human rights in the countries concerned. It was therefore vital that the Sub-Commission should concern itself with that new problem.

2. Mr. GUISSE said that so far the question had not been the subject of in-depth consideration. It was necessary not only to list all the consequences, whether positive or negative, of the activities of those enterprises but also to ensure that the developing societies in which they operated could benefit from the positive spin-offs of their activities.

3. He agreed that the financial implications of the draft resolution might create an obstacle to the realization of the activities envisaged but, in his opinion, it was for the Commission to take a decision on the question.

4. Although studies had already been undertaken on the question, they had always been done by a person or organization concerned with a very specific aspect of the problem. The proposed working group, on the other hand, would be formed on the basis of the principle of equitable geographical representation and would be able to review all aspects of the problem. He hoped that the draft resolution could be adopted without a vote, with the amendment made by Mr. Bossuyt and the addition to the last preambular paragraph which he himself proposed at a previous meeting.

5. Mr. JOINET asked whether it might not also be useful to consider the question of joint undertakings and to ascertain whether or not that new type of operation mitigated the adverse effects of the activities of transnational enterprises.

6. Ms. PALLEY said that despite the amendment made by Mr. Bossuyt, she still opposed the draft resolution and would request a roll-call vote on it. In her view, it was utterly ridiculous for the Sub-Commission, which had very few economists among its members, to consider a question that was already being studied by numerous international economic or financial organizations. Furthermore, there was nothing to stop the Commission from establishing such a

working group on its own initiative, and so it was totally unnecessary for the Sub-Commission to make such a request in a draft resolution. Lastly, at a time when the Sub-Commission had many enemies, it was vital that it should guard carefully against instigating further substantial expenditure.

7. Mr. GUISSE reminded members that the activities of transnational enterprises not only had economic consequences but also had an impact on human rights as a whole. In developing societies, many cases of institutional and political instability were directly attributable to those activities.

8. Mr. BOSSUYT said that the draft resolution reflected the growing tendency to ask the Sub-Commission or the Commission to deal with questions that were not directly related to human rights, such as the right to development or even disarmament; the bodies competent in the area of development or disarmament did not, for their part, deal with human rights. Furthermore, no information had been given, despite the provisions of rule 28 of the rules of procedure, on the financial implications of the draft resolution, even though what was proposed by the sponsors could well be costly. If the Sub-Commission pushed the Commission into further expenditure, the likely result would be that the resources allocated for the activities envisaged in the draft resolution would be deducted from the already scanty resources available to the Sub-Commission for its work.

9. Mr. JOINET said that the question covered by the draft resolution was undoubtedly very important. However, rule 28 of the rules of procedure stated: "Before a proposal involving the expenditure of United Nations funds is approved by the commission, the Secretary-General shall prepare and provide to the commission an estimate of the programme budget implications of implementing the proposal". For some years, however, the secretariat had not informed the Sub-Commission of the financial implications of the draft resolutions before it. He had intended to co-sponsor the draft resolution, but he would not like to sanction a violation of rule 28. He therefore requested that the financial implications should be provided to the Sub-Commission before it took a decision on the draft resolution.

10. Ms. PALLEY proposed that operative paragraph 7 (a) should be amended to read: "(a) To identify and examine the effects of the methods of work and activities of transnational corporations and business entities with franchises or licences from such corporations on economic, social and cultural rights and the right to development".

11. Ms. MBONU said that many questions were already being considered by other bodies but were nevertheless not disregarded by the Sub-Commission. Consequently, she did not see why that should cause a problem in the present case. The Sub-Commission should adopt the draft resolution without worrying about the financial implications. The Commission could make such amendments to the proposed text as it wished.

12. Mr. WEISSBRODT said that he, too, would like to know the financial implications of the draft resolution.

13. Mr. CISSE (Secretary of the Sub-Commission) said that, when the question had arisen at previous sessions, the secretariat had explained that any financial implications would be provided to the Commission when it came to take a decision on the draft in question.

14. Mr. WEISSBRODT said that, in the present circumstances, the implementation of rule 28 meant that the Sub-Commission could not take a decision on the draft resolution, whose financial implications were certainly substantial.

15. Mr. GUISSE pointed out that the adoption of the draft resolution did not mean that the higher bodies were automatically obliged immediately to release the funds necessary in order to carry out the proposed activities. The financial implications came into consideration, and rule 28 applied, when the text came before the Commission. He supported the amendment proposed by Ms. Palley.

16. Ms. PALLEY stressed the need strictly to apply rule 28. If that had not been done in recent years, it was due to the fact that the secretariat had misinterpreted the rule. She proposed that the opinion of the Legal Counsel of the United Nations should be sought concerning the import of the rule.

17. Mr. BOSSUYT said it was quite clear from rule 24 that rule 28 applied to the Sub-Commission. If it was decided to suspend its application, that must be done in accordance with rule 78, which read: "A rule of procedure may be temporarily suspended by the commission provided that such suspension shall not be inconsistent with any applicable decisions of the Council and provided that twenty-four hours' notice of the proposal for suspension has been given, which may be waived if no representative objects". It was, in fact, quite obvious that some members of the Sub-Commission would object to suspension.

18. Mr. YIMER said that rule 28 unquestionably applied to the work of the Sub-Commission and the Secretary-General therefore had an obligation to inform it of the financial implications of the draft resolution under consideration. As soon as it was so informed, the Sub-Commission would be able to take a decision. Consequently, there was no need to seek the opinion of the Legal Counsel.

19. Mr. CISSE (Secretary of the Sub-Commission) said that he would forward the Sub-Commission's request to the financial services; he hoped to receive a reply before the end of the session.

20. Ms. PALLEY said that she did not object to the Sub-Commission taking a decision on the draft resolution if its financial implications were made known the same day. However, it might be useful to seek the opinion of the Legal Counsel on the question of the application of rule 28 for the purposes of the future work of the Sub-Commission.

21. Ms. WARZAZI said she categorically opposed the latest proposal. The Sub-Commission was perfectly able to interpret its rules of procedure properly.

22. Mr. BOSSUYT agreed. It was not absolutely essential for the Sub-Commission to take a decision on the draft resolution immediately because it would not be called upon to establish a particular working group; that task would fall to the Commission, which could even make such a proposal on its own initiative. The decision on the draft could therefore very well be deferred until the forty-ninth session.

23. Mr. GUISSE pressed for the adoption - or rejection - of the draft there and then. He reminded members that all the working groups which existed at present had been established on the proposal of the Sub-Commission.

24. The CHAIRMAN considered that rule 28 did apply to the present case and that it would be better to postpone the vote on the draft resolution until the following session.

25. Ms. MBONU expressed surprise at the sudden interest displayed in rule 28 of the rules of procedure whereas, for some years, it had not been taken into account and many draft resolutions had been adopted without the Sub-Commission having been informed of their financial implications.

26. Ms. WARZAZI proposed, in order to try to bring the discussion to a close, that the beginning of paragraph 7 should be amended to read: "Considers that it would be useful for the Commission on Human Rights to establish, for a three-year period, ...". Paragraph 10 would accordingly be deleted.

27. Mr. WEISSBRODT supported the proposal. The question of the financial implications did not now arise since what was involved was simply a suggestion originating from the Sub-Commission.

28. Mr. KHALIL and Mr. GUISSE also supported Ms. Warzazi's proposal.

29. Draft resolution E/CN.4/Sub.2/1996/L.47, as orally amended, was adopted without a vote.

30. Ms. DAES said that although she had not opposed the consensus, she nevertheless wished to point out that for at least three years the financial implications had always been considered in the Commission on Human Rights.

31. Ms. WARZAZI said that it was no accident that the question of the application of rule 28 of the rules of procedure had been raised in connection with draft resolution E/CN.4/Sub.2/1996/L.47. The implications of that text were known to everyone. It would therefore be desirable for the question of the financial implications to be settled once and for all.

32. Mr. GUISSE said that the Sub-Commission should consider the interpretation of all rules of procedure which posed a problem.

33. The CHAIRMAN said that he would draw the attention of the financial services to that question.

Draft decision relating to agenda item 18 (continued)

Draft decision E/CN.4/Sub.2/1996/L.58 (question of the human rights dimensions of population transfers, including the implementation of settlers and settlements)

34. The CHAIRMAN informed the Sub-Commission that the funds necessary for the organization of the expert seminar on population transfer mentioned in the draft decision had been released.

35. Mr. WEISSBRODT observed that the draft decision duplicated paragraph 8 of the resolution contained in document E/CN.4/Sub.2/1996/L.16, which the Sub-Commission had already adopted. He accordingly proposed that, pursuant to rule 65 of its rules of procedure, the Sub-Commission should take no decision on the draft.

36. The CHAIRMAN said he took it that the Sub-Commission did not wish to take a decision on the draft.

37. It was so decided.

CONSIDERATION OF THE FUTURE WORK OF THE SUB-COMMISSION AND OF THE DRAFT PROVISIONAL AGENDA FOR THE FORTY-NINTH SESSION OF THE SUB-COMMISSION (agenda item 21) (E/CN.4/Sub.2/1996/L.1)

38. Mr. LINDGREN ALVES said he would like to know what publicity was given to the statements by the Chairman of the Sub-Commission, some of which were of the highest importance and should be made public as soon as possible, in particular those relating to hostage-taking.

39. Mr. CISSE (Secretary of the Sub-Commission) said that those statements were contained in the Sub-Commission's report.

40. Mr. LINDGREN ALVES, supported by Ms. DAES, said that in those circumstances very few people had any knowledge of them. He accordingly proposed that the Sub-Commission should adopt a draft decision which might, in substance, read: "The Sub-Commission decides that the statements of the Chairman should be distributed immediately after they have been adopted to the Department of Public Information and formally requests the Department of Public Information to disseminate them as widely as possible".

41. The draft decision proposed by Mr. Lindgren Alves was adopted without a vote.

42. The CHAIRMAN invited the members of the Sub-Commission to consider the draft provisional agenda for the forty-ninth session issued under the symbol E/CN.4/Sub.2/1996/L.1, which had been prepared by the bureau in cooperation with other interested members. He drew attention to the fact that that draft, which he read out, contained only 14 items, 8 less than the agenda for the current session, and that some sub-items or paragraphs would only be considered every two years. At the request of Mr. Chernichenko, he pointed out that the study to be submitted by him on the question of gross and large-scale violations of human rights would be considered under agenda item 12.

43. Ms. DAES considered that the wording of agenda item 7 should reflect the progress made by the Sub-Commission and the Working Group on Indigenous Populations. She therefore proposed that the item should be entitled "Human rights of indigenous peoples" or "Protection of indigenous peoples", and that two paragraphs should be added concerning the study on the significance of treaties agreements and other constructive arrangements and the study on the land rights of indigenous peoples.

44. Mr. FAN GUOXIANG suggested that, in the light of draft resolutions E/CN.4/Sub.2/1996/L.35 and L.47 which had just been adopted, the Sub-Commission should add two paragraphs to agenda item 4 entitled: "Realization of the right to development" and "Question of the effects of the activities of transnational corporations on the realization of human rights".

45. He would also like to know under which agenda items the Sub-Commission would consider the questions of racism, xenophobia, minorities and migrant workers, which had been the subject of agenda item 20 at the current session.

46. The CHAIRMAN said that those questions would be considered under agenda items 3, 8 and 11.

47. Mr. GUISSE endorsed Mr. Fan Guoxiang's proposal concerning agenda item 4. In his view, it was essential that the situation of migrant workers and members of their families (item 11 of the provisional agenda) should be considered every year and not every other year, given the seriousness of the problems with which that population group was confronted.

48. Ms. GWANMESIA proposed that a paragraph entitled "Role and equal participation of women in development" should be added to agenda item 5. She reminded members that the Sub-Commission had asked her to submit to it, at its forty-ninth session (1997), a working paper on the administration of justice for juveniles. However, she noted that that question would not be taken up until the 1998 session and would welcome clarification on that point. Lastly, she welcomed the fact that the number of items on the agenda had been reduced from 22 to 14, which would enable members to study the documents submitted to them in greater depth.

49. Mr. JOINET proposed that, in order to avoid any overlapping, the question of policies of racial discrimination and segregation and of apartheid, currently contained in item 2 of the draft agenda, should be incorporated in item 3 (Elimination of racial discrimination).

50. Agenda item 9 (a) (Question of human rights and states of emergency) should be considered every year. If it was taken up only every other year, the report and list prepared by the Special Rapporteur, which were extremely useful - especially for officials responsible for special procedures - would no longer be up to date.

51. Unfortunately, for lack of time, item 9 (b) (Individualization of prosecution and penalties) had never been debated or been the subject of a document. It would therefore be better to delete it. As to item 9 (c) (Application of international standards concerning the human rights of detained juveniles), it should be ascertained that the Committee on the Rights of the Child was not already studying that question. Lastly, the wording of item 9 and the wording of the agenda of the Working Group on the

Administration of Justice should perhaps be harmonized. That having been said, the draft agenda was very balanced and would enable the Sub-Commission to give serious consideration to all the items included on it.

52. Mr. BOSSUYT said that the draft agenda was the outcome of the numerous decisions taken by the Sub-Commission at its present session and at its previous sessions; it was essential that it should be adopted in order that the secretariat might be able to prepare the annotated agenda. He invited members who wished to make amendments to do so at the commencement of the Sub-Commission's following session.

53. To the question asked by Mr. Guissé the Sub-Commission could give two answers: either it considered that item 11 formed part of item 3 and in that case dealt with it every year; or it considered that it was a new item and that it must therefore deal with it every two years since it was absolutely essential to reduce the size of the agenda. Only the items relating to questions considered by a working group should be taken up every year.

54. The CHAIRMAN pointed out for the benefit of Ms. Gwanmesia that all the working papers and studies which the Sub-Commission had decided to consider the following year would be so considered. Those papers and studies would, of course, be mentioned in the annotated agenda.

55. Mr. LINDGREN ALVES said he fully endorsed the views expressed by Mr. Bossuyt. He acknowledged that some of the questions which were only considered every other year, notably the question of migrant workers, were extremely important but stressed that, if the Sub-Commission could not consider the items on its agenda in depth, it had no choice but to reduce the number of those items.

56. Mr. ALI KHAN agreed that item 11, which was extremely important, must be considered every year. And he proposed that the question of terrorism should be included under agenda item 12 (b), between (1) and (2).

57. The CHAIRMAN supported that proposal.

58. Mr. KHALIL said he also considered that the question of migrant workers (item 11) should be considered every year.

59. Ms. MBONU asked why the agenda contained no item on new forms of xenophobia. She supported Mr. Fan Guoxiang's proposal that two paragraphs should be added under item 4.

60. Mr. WEISSBRODT said he would try to recapitulate the various suggestions made by members of the Sub-Commission. In order to give effect to Mr. Joinet's proposal, he suggested that item 3 should be entitled: "Comprehensive examination of thematic issues relating to the elimination of racial discrimination"; the question of migrant workers, which would be considered annually, should be taken up under item 3 (a) and the question of xenophobia under item 3 (b). He supported Mr. Fan Guoxiang's proposal concerning item 4 and Ms. Daes' proposal concerning item 7, which could indeed be entitled "Human rights of indigenous peoples". With regard to states of emergency, the Sub-Commission should consider taking up that question every two years but the studies themselves must be continued on an annual basis. The question of terrorism should also be included in the agenda.

61. The CHAIRMAN added that the Sub-Commission might wish to endorse Ms. Gwanmesia's proposal that item 5 should include a paragraph relating to the role and equal participation of women in development.

62. Ms. GWANMESIA said that the provisional agenda and the schedule for the consideration of items should be prepared sufficiently in advance to give members time to study them before the forty-ninth session.

63. Mr. MEHEDI considered that the question covered by item 12 (b) (2) should appear either at the beginning or at the end of item 12 (b).

64. Mr. ALFONSO MARTINEZ asked whether it might not be possible to include under item 4 the question of extreme poverty and income distribution. Under item 9, he would like to add the question of the privatization of prisons, which could appear as paragraph (d). Lastly, concerning item 12, he had thought that there was agreement on mentioning the follow-up to earlier studies.

65. The CHAIRMAN said that all the studies under way could be mentioned under the corresponding agenda items. When studies were completed, they would appear under other agenda items. As to the question of poverty and income distribution, he had no objection to its being mentioned under item 4. He suggested that the members of the Sub-Commission should give the secretariat in writing any further amendments they wished to make to the provisional agenda. On that understanding, and if there was no objection, he would take it that the Sub-Commission adopted the draft provisional agenda for the forty-ninth session, issued under the symbol E/CN.4/Sub.2/1996/L.1.

66. It was so decided.

ADOPTION OF THE REPORT ON THE FORTY-EIGHTH SESSION (agenda item 22) (E/CN.4/Sub.2/1996/L.10 and addenda and L.11 and addenda)

67. Ms. GWANMESIA (Rapporteur) said that, because of its heavy workload and delays in the consideration of agenda items, the Sub-Commission had been unable to complete its report. The completed chapters were available in documents E/CN.4/Sub.2/1996/L.10 and Add.1, 2, 13, 16 and 17, and the adopted draft resolutions were contained in documents E/CN.4/Sub.2/L.11 and addenda thereto. Counting on the understanding and confidence of members, she, with the assistance of the secretariat, would complete the remaining chapters. The draft report would be transmitted to all members, who, if they so wished, would be able to comment before the final text was drafted.

68. She expressed warm thanks to the Chairman of the Sub-Commission for his competence and patience, and to all other members of the Sub-Commission. She also thanked all those who had helped her in her task, in particular Mr. Cissé and all the secretariat staff for their devoted collaboration, and the observers for States, NGOs and United Nations bodies who had taken an active part in the work of the Sub-Commission.

69. The CHAIRMAN thanked Ms. Gwanmesia for the work she had done, and all those who had assisted her in her task. If there was no objection,

he would take it that the Sub-Commission provisionally adopted the report on its forty-eighth session.

70. It was so decided.

71. The CHAIRMAN said that he was extremely pleased with the spirit of cooperation which had been shown by the members of the Sub-Commission, observers and secretariat staff and which had enabled the Sub-Commission, despite the extremely limited time allotted to it, to complete its work punctually. He welcomed the fact that it had been able to give in-depth consideration to the question of its methods of work and to action to be taken on resolution 1996/25 of the Commission on Human Rights. He particularly welcomed the adoption of draft resolutions E/CN.4/Sub.2/1996/L.42 and L.37. The question of the time allotted continued to cause problems and the Sub-Commission had called for a statement of the financial implications of three proposals whereby its time would be organized differently.

72. The presence of observers for NGOs, Governments and United Nations agencies was very positive. He strongly urged those observers, and in particular observers for NGOs, not to confine themselves, at the forty-ninth session, to reporting human rights violations but to describe the positive aspects and initiatives that were being taken in the various countries, in order that the lessons of those positive experiences might be learned. In conclusion, he thanked all those who had enabled the Sub-Commission to do its work successfully.

73. Mr. PACE (Chief, Legislation and Prevention of Discrimination Branch), speaking on behalf of the High Commissioner for Human Rights, congratulated the Sub-Commission on the work it had done at its forty-eighth session. The Sub-Commission continued to have an important role to play in international standard-setting in the sphere of human rights. It was paying growing attention to the question of the effective implementation of those standards and making untiring efforts in the areas of the prevention of discrimination and the protection of minorities. It was to be hoped that, by the forty-ninth session, it would have moved even closer to the spirit of Vienna and to the concept of the integration of all human rights.

74. For his part, the High Commissioner was leading an unprecedented restructuring operation which would enhance the capacity of the secretariat to follow up the decisions of the Sub-Commission. In devoting himself to research and quality analysis, he hoped to be in a better position to assist the Sub-Commission in carrying out its mandate. His objective was to give the human rights programme the cohesiveness set out in the Vienna Declaration and Programme of Action. Those improvements would not come easily and everyone would have to exercise awareness and discipline. The way in which the Chairman had conducted the proceedings of the Sub-Commission's forty-eighth session demonstrated that that was possible. The High Commissioner and his staff remained committed to giving the Sub-Commission the possibility of playing its full part in human rights activity in the United Nations.

75. After the customary exchange of courtesies, the CHAIRMAN declared the forty-eighth session of the Sub-Commission closed.

The meeting rose at 1.40 p.m.